

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

2004 FEB 25 P 4: 11

COMMISSIONERS

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Arizona Corporation Commission
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E-01049A-04-0135

IN THE MATTER OF THE APPLICATION OF THE
MORENCI WATER AND ELECTRIC COMPANY
FOR APPROVAL OF AN ELECTRIC SERVICE
AGREEMENT WITH PHELPS DODGE MORENCI,
INC.

Docket No. E-01049A-04-

APPLICATION

The Morenci Water and Electric Company (MWE) hereby applies for approval of a proposed electric service agreement between MWE and Phelps Dodge Morenci, Inc. The new agreement slightly modifies the existing Commission-approved electric service agreement between MWE and Phelps Dodge Morenci. A copy of the proposed electric service agreement is attached to this application. In support of this application, MWE states:

1. MWE is certificated to provide electric service as a public service corporation in the State of Arizona.

2. MWE does not have a tariff for large industrial customers such as Phelps Dodge Morenci. As a result, MWE entered into an electric service agreement with Phelps Dodge Morenci and the Commission approved that agreement in Decision No. 60807 (April 8, 1998). In recommending approval of that agreement, the Commission Staff stated that the revenue MWE would receive from Phelps Dodge Morenci would cover the costs of serving Phelps Dodge Morenci.

3. Subsequent to the approval of the existing electric service agreement, MWE submitted an application for a Certificate of Environmental Compatibility to construct a 345 kV line to reinforce the existing transmission system to the MWE service area, in particular

1 the Phelps Dodge Morenci mining operation. The additional line is needed primarily to
2 provide additional transmission capacity to meet increased load of Phelps Dodge Morenci's
3 mining operations. The line also provides increased reliability of the MWE electrical
4 system as well as increased access to the wholesale power market. The Commission
5 approved the granting of a CEC for the 345 kV line in Decision No. 62459 (April 14,
6 2000).

7 4. MWE is in the process of constructing the 345 kV line and it should be energized
8 as of May 31, 2004. The construction of the line is being paid for by paid in capital from
9 MWE's parent, Phelps Dodge Corporation.

10 5. Given the load profile of MWE's service area, over 98% of the capacity of new
11 345 kV line will be used to provide electric service to the mining operations of Phelps
12 Dodge Morenci. However, the existing electric service agreement between MWE and
13 Phelps Dodge Morenci does not provide for a transmission charge to Phelps Dodge
14 Morenci. MWE and Phelps Dodge Morenci have agreed to a modification of the existing
15 agreement to add a transmission charge of \$0.001732/kWh (see Section 6 of the proposed
16 agreement). In all other respects, the agreement is identical to the approved agreement.

17 6. Because the new 345 kV line almost wholly benefits Phelps Dodge Morenci, the
18 transmission charge is calculated to have Phelps Dodge Morenci effectively pay for the
19 capital cost of the new 345 kV line over the period of 30 years as well as for the operation,
20 maintenance and property taxes related to the line. The modification is intended to serve
21 the original purpose of the existing approved electric service agreement because the revenue
22 received by MWE from the transmission charge will allow MWE to continue to cover the
23 cost of serving Phelps Dodge Morenci.

24 7. At this point, MWE is not seeking any changes to its existing residential and
25 commercial tariffs, even though residential and commercial customers benefit from the
26 increased reliability of the transmission system into the MWE service area.
27

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1 WHEREFORE, MWE requests that the Commission approve the new electric
2 service agreement between MWE and Phelps Dodge Morenci with an effective date of May
3 31, 2004, which is the estimated date that the new 345 kV line will be energized and begin
4 serving MWE's service area.

5
6 RESPECTFULLY SUBMITTED February 25, 2004.

7 THE MORENCI WATER AND ELECTRIC COMPANY

8 By 

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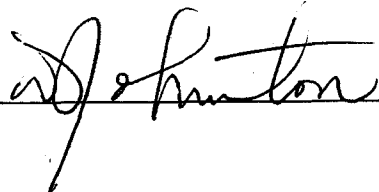
15 ORIGINAL + 13 COPIES of the foregoing
16 filed February 25, 2004, with:

17 Docket Control
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington
20 Phoenix, Arizona 85007

21 COPIES of the foregoing hand-delivered
22 February 25, 2004, to:

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ATTACHMENT

**ELECTRIC SERVICE AGREEMENT
BETWEEN
THE MORENCI WATER AND ELECTRIC COMPANY
AND
PHELPS DODGE MORENCI, INC.**

THIS AGREEMENT was as of the first day of May, 2004 by and between THE MORENCI WATER AND ELECTRIC COMPANY, an Arizona corporation ("Utility") and PHELPS DODGE MORENCI, INC., a Delaware corporation ("Customer").

1. Recitals:

This Agreement is made with reference to the following facts, among others:

1.1 Utility is engaged in the business of providing electric utility service to customers in and near the unincorporated community of Morenci, the Town of Clifton and successors in Greenlee County, Arizona Pursuant to authority granted by the Arizona Corporation Commission.

1.2 Customer needs a supply of power and energy for its mining, milling and related ore extraction operations which are located within Utility's certificated area.

1.3 Utility owns (or will acquire) an interconnection with the electrical transmission facilities of Arizona Electric Power Cooperative, Inc. to enable Utility to have access to wholesale market supplies of power and energy for the benefit of all of Utility's present and future customers.

1.4 Utility or Customer may be referred to herein individually as "Party" and collectively as "Parties."

2. Agreement; Purchase of Power and Energy; Authorized Representatives.

Utility agrees to sell and Customer agrees to purchase the electric power and energy scheduled by Customer in accordance with the terms of this Agreement. Utility shall provide electric service to Customer for Customer's use at operations in the near Morenci, Greenlee County, Arizona Corporation Commission and Utility's filed rules of service and tariffs, except as amended by this Agreement. Customer shall schedule energy from Utility on the basis of times, dates and protocols established by the Authorized Representatives of the Parties. The Parties agree to designate their Authorized Representatives within thirty (30) days of execution of this Agreement. Any changes in either Party's Authorized Representatives shall be made known to the other Party as soon as reasonably practicable. The Authorized Representatives shall meet periodically to discuss and resolve electric service or related issues that may arise from time to time as a result of service under this Agreement.

3. Points of Delivery.

Utility agrees to deliver to Customer the electric power and energy under this Agreement at mutually agreed upon delivery points on Utility's system which may be changed from time to time upon agreement of the Parties.

4. Metering.

Utility shall provide and maintain appropriate meters or metering facilities and shall furnish Customer a monthly statement for the consumption during the preceding month. The meter or meters shall be calibrated to the satisfaction of both parties and shall be calibrated within a reasonable time after request made by either Party, in accordance with the following procedures:

(a) The calibration shall be done in the presence of the authorized representative of each Party and the cost shall be borne equally by both Parties.

(b) If the calibration discloses inaccuracy exceeding 3%, proper calibration shall be made of the consumption recorded during the previous 30 days or the part thereof which may be subsequent to the last preceding

calibration. Consumption adjustments shall be debited or credited to the Customer in accordance with such corrected calibrations.

(c) In the event that any meter shall cease registration or that it shall become evident that inaccuracy has existed for a period shorter than 30 days correction shall be made as estimated from other meters and from other proper data.

(d) Corrections so made shall be accepted by both Parties as adjusting all claims arising out of such inaccuracy.

5. Use of Energy

Energy delivered to Customer under this Agreement shall be consumed by Customer in the most efficient manner possible. Where practicable and barring unforeseen circumstances including Uncontrollable Forces, Customer shall consume all energy in accordance with the energy schedule established by its Authorized Representative in coordination with the Authorized Representative of Utility.

6. Payment for Service

Customer agrees to pay Utility monthly for all power and energy provided to or scheduled by Customer. Payment shall be made at Utility's general offices in Morenci, Arizona within fifteen (15) days from the date of receipt by Customer. Payment via wire transfer of United States funds may be made where Utility designates in writing to Customer the deposit account and wire transfer numbers to enable the transfer to be timely made. Utility shall charge Customer for electric service provided hereunder on monthly basis the sum of following rates and charges:

- | | | |
|----|------------------------------|---|
| a. | <u>Customer Charge =</u> | Five hundred dollars (\$500) per month; and |
| b. | <u>Energy Charge =</u> | Utility's System Average cost of Electricity (as defined below) multiplied by Customer's metered monthly consumption, plus an additional \$0.00035 per kWh. |
| c. | <u>Transmission Charge =</u> | \$0.001732 per kWh multiplied by the customer's consumption |

Utility's System Average Cost of Electricity shall be calculated monthly by Utility in the following manner. First, Utility shall identify each month's total purchased power and energy cost, which shall include all transmission or wheeling charges, losses and all other charges which may be incurred by Utility in connection with purchasing electric energy for resale to its customers (hereafter "Utility's Total Purchased Power and Energy Costs"). Second, Utility shall calculate all of the metered electric energy sold to all purchasers (including Customer) during the same month. Third, Utility shall divide the total number of kilowatt hours sold to customers into the Utility's Total Purchased Power and Energy Costs. The resulting rate shall be expressed in dollars per kWh and constitutes the Utility's System Average Cost of Electricity for the particular applicable month. Utility's System Average Cost of Electricity shall be multiplied by Customer's metered monthly consumption resulting in the Energy Charge (including the adder of \$0.00035 per kWh) for each respective month in which service is provided under this Agreement. Customer shall not be subject to Utility's purchased power and fuel adjustment clause rate.

7. Billing Disputes

In the event any portion of any bill is in dispute, Customer shall pay both the disputed and undisputed amount when due. If, upon review, the bill is determined to be incorrect, the disputed portion of the bill which was paid shall be immediately refunded to Customer. All billing disputes between the Parties shall be resolved by good faith negotiation of the Parties and, failing such resolution, disputes shall be submitted to arbitration for determination in accordance with the uniform Arbitration Act, Ariz. Rev. Stat. Ann. 12-1501 et seq.

8. Effective Date and Term

a. The initial date of service under this Agreement shall be as established by the Authorized Representatives of the Parties.

b. This Agreement shall remain in effect as long as Customer maintains any business operations in utility's certificated area. This Agreement may be terminated by either Party upon giving the other Party six (6) months prior written notice of termination.

9. Uncontrollable Forces.

Utilities shall not be liable to Customer nor to any other person, firm or corporation whatsoever, for or on account of any interruption or failure in delivery of electrical power and energy in accordance with this Agreement, or for or on account of any loss, injury or damage occasioned thereby, where such interruption or failure, either directly or indirectly, is caused by results from an Uncontrollable Force including the following:

- (a) Fire, lighting, flood, windstorm, act of God, invasion or force majeure.
- (b) Compliance with any orders, rules, or regulations, whether valid or invalid, of any governmental authority or agency.
- (c) Strikes, lockouts or labor disputes.
- (d) Breakdown, repair or replacement of any machinery, equipment, transmission line, pipeline or other facility.
- (e) Shortage of any purchased power, fuel, supplies, material or labor, or where such interruption or failure is directly or indirectly due to any cause not reasonably preventable by Utility or not reasonably within its control.

In case such interruption or failure shall be occasioned by any cause specified under (d) or (e) above, Utility will endeavor to remedy or eliminate such cause as expeditiously as is reasonably possible. In the event claims or causes of action are instituted by third parties as a result of any interruptions or failures as hereinabove specified, Customer shall indemnify and defend Utility against all liability or loss.

10. Approvals

This agreement shall be submitted to and is subject to the approval of the Arizona Corporation Commission.

11. Counterparts.

This agreement may be executed in counterparts, each of which when taken together shall constitute the original Agreement.

12. Assignments.

This Agreement shall inure to the benefit of and be binding on the Parties hereto and their respective successors and assigns. Neither Party may assign its rights or obligations under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld.

13. Governing Law.

This agreement shall be interpreted, governed by and construed under the laws of the State of Arizona.

14. Amendments.

This agreement may be amended by, and only by, a written instrument signed by the parties.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed as of this 1st day of May 1998.

The Morenci Water and Electric Company

By _____

Its Superintendent

Phelps Dodge Morenci, Inc.

By _____

Its President